Western Great Lakes Pilots Association *and* International Longshoremen's Association Local 2000, Great Lakes District Council-Atlantic Coast District. Case 18–CA–15976–1

February 27, 2004

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND WALSH

On May 15, 2002, Administrative Law Judge William J. Pannier III issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions[2] and to adopt the recommended Order as modified.[3]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Western Great Lakes Pilots Association, Superior, Wisconsin, its officers, agents, successors, and assigns shall take the action set forth in the Order as modified.

Dated, Washington, D.C. February 27, 2004

Wilma B. Liebman, Member

Dennis P. Walsh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

CHAIRMAN BATTISTA, concurring.

In adopting the judge's 8(a)(5) finding, I am somewhat sympathetic to the Respondent's argument that the Union's active support for the unified pilot management proposal constituted a disabling conflict of interest on the Union's part which justified the Respondent's suspension of bargaining. As the judge found, the proposal would have "put [the Respondent] out of business" if the United States Coast Guard adopted and implemented it. However, I agree with the judge that, under the circumstances presented here, the Respondent failed to meet the "heavy" burden of proving that the Union's support for that proposal created the kind of conflict of interest that posed a "clear and present danger" of interfering with the parties' collective-bargaining process. *CMT, Inc.* 333 NLRB 1307 (2001); *Alanis Airport Services*, 316 NLRB 1233 (1995). In reaching this conclusion, I rely particularly on the fact that implementation of the unified proposal could not be accomplished by the Union itself. Rather, implementation could only be accomplished by the Coast Guard, following institution of notice-and-comment rulemaking in accord with Federal regulatory procedures. That did not occur here. Indeed, at the time of the hearing, the Coast Guard was neither actively considering the unified proposal nor indicating any future intent to do so. Accordingly, as in *Alanis Airport Services*, 316 NLRB at 1234, I find that it would be "premature" to consider whether there was a clear and present danger of a disabling conflict of interest on the part of the Union.

In addition, the Union's *aim* was not to put the Respondent out of business. Although adoption and implementation of the unified proposal by the Coast Guard would result in the Respondent's dissolution, this was an ancillary effect of the proposal; it was not the objective. The proposal was made in response to the Coast Guard's solicitation of ideas for improving pilotage services throughout the *entire* "St. Lawrence Seaway-Great Lakes System." The purpose of the proposal was to "correct the problems that currently exist in the areas of safety, reliability and efficiency" and thereby "promote the St. Lawrence Seaway-Great Lakes Waterway as a viable shipping alternative and upgrade the professional status of the marine pilot within that system." Thus, the unified proposal is not directed at the Respondent, which services only one of the three districts within the system, but sought reform of pilotage services throughout the *entire* system.

Finally, the Union's position is not contrary to the process of collective bargaining. The collective-bargaining process would be aimed at setting terms and conditions of employment for the Respondent's unit employees. By contrast, the proposal is aimed at changing

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[2] In the final sentence of the "Discussion" section of the judge's decision, the judge expressed the view that, throughout this proceeding, the Respondent's "entire course of conduct seem[ed] aimed at frustrating further regulatory reform" by the Coast Guard. We do not rely on the judge's remarks in this sentence as they are unnecessary to the finding of the violation found herein.

[3] In accord with *Excel Container, Inc.*, 325 NLRB 17 (1997), the correct date in par. 2(b) of the judge's recommended Order is March 7, 2001, not October 13, 2000.

the nature of pilotage services throughout the Seaway-Waterway system. Thus, good-faith bargaining can occur, even while the Union seeks a change in that system.

Dated, Washington, D.C. February 27, 2004

Robert J. Battista, Chairman

NATIONAL LABOR RELATIONS BOARD

Timothy B. Kohls, for the General Counsel.
Michael J. Moberg (Briggs & Morgan, P.A.), of Minneapolis, Minnesota, and *Robert E. Day (Williams, Mullen, Clark & Dobbins)*, of Detroit, Michigan, for the Respondent.
George H. Faulkner (Faulkner, Muskovitz & Phillips, LLP), of Cleveland, Ohio, for the Charging Party.

DECISION

STATEMENT OF THE CASE

WILLIAM J. PANNIER III, Administrative Law Judge. I heard this case in Duluth, Minnesota, on October 24, 2001.[1] On July 31 the Regional Director for Region 18 of the National Labor Relations Board (the Board) issued a complaint and notice of hearing, based on an unfair labor practice charge filed on April 13, alleging violations of Section 8(a)(1) and (5) of the National Labor Relations Act (the Act). All parties have been afforded full opportunity to appear, to introduce evidence, to examine and cross-examine witnesses, and to file briefs. Based on the entire record, on the briefs that have been filed, and on my observation of the demeanor of the witnesses, I make the following findings of fact and conclusions of law.

I. THE ALLEGED UNFAIR LABOR PRACTICES

A. Introduction

This case presents an alleged unlawful refusal to continue bargaining—actually, a suspension of further bargaining—with an incumbent bargaining agent. That is admitted. In defense, however, it is argued that refusal to continue bargaining, or suspension of further bargaining, has been justified by a conflict of interest on the part of that bargaining agent—a conflict that could inherently jeopardize continued good faith collective bargaining, under the doctrine enunciated in *Bausch & Lomb Optical Co.*, 108 NLRB 1555 (1954). That defense requires more than passing understanding of pilotage on the Great Lakes-St. Lawrence Seaway System, under the Great Lakes Pilotage Act of 1960, 46 U.S.C. Section 9101 et seq.

As revealed by even a momentary glance at a map of North America, the Great Lakes and St. Lawrence River are bordered by Canada and the United States of America. In consequence, both countries regulate shipping on those bodies of water. One aspect of such regulation is pilotage of ocean-going vessels.

In general, pilots are persons who, based on knowledge of local waters and experience navigating on them, have been certified by one or the other country, maybe both, to direct navigation of ocean-going vessels on the Great Lakes-St. Lawrence Seaway System. A pilot is required to board every such vessel whenever it enters that system, directing its navigation until the vessel reaches anchorage or dock. Conversely, a pilot is required whenever vessels make return trips, from anchorage or dock until leaving that system.

For the United States, regulation of pilotage is the responsibility of the Office of Great Lakes Pilotage, an arm of the Coast Guard, under the Department of Transportation. That office is headed by an admiral, the Assistant Commandant for Marine Safety and Environmental Protection, according to Vol. 65, No. 250 of the Federal Register for Thursday, December 28, 2000, a document of which more will be said *post.* That position was occupied by an officer identified in the record only as Admiral North until he retired, estimated to have occurred during May. His successor is Admiral Paul Pluta. Reporting to the assistant commandant is Jeff High, title unspecified. Reporting to High is Director of Pilotage Frank Flyntz. Both of the latter are civilian appointments. Reporting to Flyntz is Jeff Bennett, title also unspecified. According to the above-mentioned Federal Register, Tom Lawler is chief economist, Office of Great Lakes Pilotage. All of these officials are mentioned during testimony about events which occurred during the winter and spring.

As might be expected, there are various organizations with interests in shipping on the Great Lakes-St. Lawrence Seaway System. For example, seemingly every port on, at least, the Great Lakes has its own organization, such as the Duluth Seaway Port Authority. Its executive director is Davis Helberg. Twelve of the United States ports, including those at Duluth and at Superior, Wisconsin, are members of an industry association, American Great Lakes Ports. Its executive director is Steven A. Fisher. In addition, though unnamed and not described with any particularity, apparently there is an association of shippers who utilize the Great Lakes-St. Lawrence Seaway System.

As already pointed out, the Office of Great Lakes Pilotage regulates pilots on that system for the United States. That office is free to make certain pilotage changes. For example, it can decertify one of the below-mentioned pilots' associations and replace it with another. It can also certify individual pilots to operate in competition with an association. But, it can only make such changes within the overall framework of a pilotage structure already established pursuant to the above-mentioned Great Lakes Pilotage Act of 1960. Such changes in the overall framework can only be made pursuant to what has been referred to as "notice-and-comment rulemaking." *Barnhart v. Walton*, 535 U.S. 212, 222 (2002). Initiation of that procedure in late 2000 has given rise to the dispute involved here.

For pilotage, at least, the Great Lakes-St. Lawrence Seaway System is divided into three districts. District 1 embraces the St. Lawrence River and Lake Ontario. Lake Erie and the Detroit and St. Claire Rivers comprise District 2. The remaining three lakes—Michigan, Huron, and Superior—are in District 3. Separate associations of pilots exist and have been certified to provide pilotage in each separate district. Two of those associations, one of which is the association for District 3, supply the pilots for ocean-going vessels operating on the waters of each respective district. Each of those two associations handles its own dispatching of pilots and billing for their services. According to the Office of Great Lakes Pilotage *"CONCEPT PAPERS,"* of which much more will be

[1] Unless stated otherwise, all dates occurred during 2001.

PAPERS," of which much more will be said in succeeding subsections, the third "association pays the Canadians for dispatch." No one of those three associations confronts any pilotage competition from any other association though, as will be seen, the Coast Guard did make some effort during 2000 to certify a competing association for District 1, a district in which considerable complaining has arisen.

As mentioned above, the Office of Great Lakes Pilotage can decertify an association of pilots. That occurred for District 3 during 1992. As a result, Respondent, Western Great Lakes Pilots Association, came to be certified as the association for pilotage in District 3. Respondent admits the allegation that, at all material times, it has been a Wisconsin partnership, with an office and place of business in Superior, engaged in providing pilotage services for vessels on Lake Superior. More specifically, it is "a limited liability partnership," according to its president, Donald Carl Willecke, of "eighteen partners at this time," all of whom are captains and pilots, not only for vessels on Lake Superior, but for all three lakes within District 3.[2] Five of them serve on Respondent's board of supervisors: President Willecke, First Vice President Edward Charles Harris, Second Vice President Glen Pahel, Secretary John Swartout, and Treasurer Andy Sciullo. Only Willecke and Harris appeared as witnesses. For the most part, they were the only board members involved in the events which have led to issuance of the complaint, though each of those five captains are alleged and admitted to have been statutory supervisors and agents of Respondent at all material times. In fact, no one contends that any one of the 18 partners is, or has been, an employee within the meaning of Section 2(3) of the Act.

Since 1992 Respondent has continuously supplied pilotage services for District 3. In addition to its Superior office it operates an office in DeTour Village, Michigan and has a driver/dispatcher in Indiana who provides below-described services in the Chicago, Illinois, area.

During 1998 Respondent recognized the Union, International Longshoremen's Association Local 2000, Great Lakes District Council-Atlantic Coast District, an admitted statutory labor organization, as the exclusive collective-bargaining representative of all employees in an appropriate bargaining unit of full-time seasonal and nonseasonal nonpilot employees employed by Respondent; excluding guards, supervisors, and managers. That unit includes Respondent's comptroller—sometimes referred to in testimony as office manager-comptroller—clerical assistant, head and assistant dispatchers, and dispatcher/driver. Obviously, none of those employees are pilots. Collectively, they are responsible for the dispatching and billing functions involved in Respondent's pilotage operations.

Most of those employees work at or out of Respondent's Superior office. One or more of the dispatchers work at or out of the DeTour Village office. The driver/dispatcher, an Indiana resident, dispatches for the Chicago area. In addition, he drives pilots between docks and hotels, railroad stations and airports, depending on the particular situation, in the Chicago area.

Respondent's recognition of the Union was embodied in a collective-bargaining contract, by its terms effective from January 1, 1998, through and including December 31, 2000. During September of 2000 the parties began negotiating for a successive contract. Three or four more negotiating sessions during 2000 did not generate agreement. The last negotiating session occurred on December 8, 2000. Respondent's negotiating team was headed by Co-counsel Day, accompanied by President Willecke and First Vice President Harris. Negotiating for the Union were its vice president of the Great Lakes William Yockey, also a captain, and two employees of Respondent: Janice Halverson and Randy Senich. Senich was then Respondent's chief dispatcher. Halverson was then its controller. She is the wife of one of Respondent's partner-captains, Paul Halverson.

As it turned out, the December 8, 2000, negotiating session would be the last such session. No further bargaining was conducted thereafter by the parties. From December 28, 2000, through the following February events occurred which arose as a result of the Office of Great Lakes Pilotage's institution of notice-and-comment rulemaking, in the Federal Register of December 28, 2000, to possibly change the pilotage framework on the Great Lakes-St. Lawrence Seaway System. Those matters are discussed in greater detail in subsection B below. At this point, the significant facts are that the above-mentioned concept papers were a major topic of discussion at that Office's annual meeting, conducted on January 30. Between December 28, 2000, and January 30, Halverson formulated an alternative proposal. It has come to be referred to as the unified pilot management proposal. Essentially, it would substitute a single "not for profit organization," for the existing three-district, three-association pilotage framework for the entire system. Were her proposal to be adopted, no one contests, Respondent would be put out of business. The Union has supported her proposal. But, there is no evidence that it had promoted her formulation of it.

For purposes of this proceeding, her proposal, and ensuing meetings concerning it, had two consequences. First, by memorandum dated February 7, Respondent's board of supervisors notified Chief Dispatcher Senich that he was "being reclassified from Chief Dispatcher to assistant dispatcher," because of earlier "abusive" and "vulgar" threats he had made to contract-pilot Captain Paul Joaquin. Then, during the Winter meeting of Respondent's pilots on February 24, the partners voted to discharge Halverson, if she was unwilling to resign. No dispute that the Board's decision was made solely because of the unified pilot management proposal which Halverson had formulated and, as discussed in subsection C below, distributed. Thus, Willecke testified that he had told her, "I think it's best for the association and for you based on your support of this proposal to put us out of business you resign." When she declined to do so, she was fired.

The General Counsel does not allege that the Act had been violated by either Senich's, in effect, demotion, nor by Halverson's discharge. As might be expected, however, the

[2] Respondent admits the allegation that, at all material times, it has been engaged in commerce within the meaning of Sec. 2(2), (6), and (7) of the Act, based on the also-admitted allegations that, in the course of conducting its above-described business operations during calendar year 2000, it received gross revenues in excess of $5 million from sales or performance of its services and, during that same calendar year, received gross revenues in excess of $50,000 directly from customers outside the State of Wisconsin, for sales or performance of services.

Union took umbrage with the fact that one of its two employee-negotiators had been demoted and the other fired. It filed grievances concerning both personnel actions. As will be seen in subsection D below, both the demotion and the discharge became subjects of telephone conversations involving Yockey, on March 1 with Harris and on March 7 with Willecke. During both conversations Yockey made remarks which, contends Respondent, fortified its decision to take action on March 7, in connection with further bargaining with the Union.

By letter dated March 7, Respondent's co-counsel and head negotiator notified the Union's president, John Baker, that "there is a conflict of interest" on the part of the Union, arising from its support for Halverson's proposal, "supplanting [Respondent] with a new entity," thereby occasioning "little doubt that success in bargaining is remote and any significant delays, disruptions, labor disputes and any cost increases enhance and promote the Halverson proposal at the expense of" Respondent and all of its employees. Accordingly, the letter continues, Respondent "is unable to continue bargaining until the [U]nion as duly designated 9(a) representative . . . decides whether to abandon the unit, disclaim representation, and/or propose a completely satisfactory resolution which includes total and complete disavowal of any participation in the Halverson proposal or any successor solution akin to [that] proposal," and, as well, removal "from the bargaining table and its process" of Yockey and Halverson.

By letter to Day, dated March 29, Baker replied, inter alia, that "if you are willing to commit to good faith bargaining, as well as recission of the unlawful actions taken against our members, I would be more than willing to speak with you." Day responded to that offer by letter dated April 5. Among other things, he stated in his letter that, "Your letter does not offer sufficient corrective action. In other words, we believe the bargaining process remains tainted and we do not see how the [Union] can carry water on both shoulders, it is hard enough on just one."

In fact, as discussed further in subsection C below, the unified pilot management proposal remained a viable subject for discussion throughout the Summer. As will be seen, however, while Halverson and the Union continued to support and advocate it, the real effort to persuade the Office of Great Lakes Pilotage to initiate notice-and-comment rulemaking, concerning the unified pilot management proposal, seems to have come from American Great Lakes Ports, more specifically from its Executive Director Fisher.

In that connection, Willecke was asked if it was his "understanding as to whether under federal law the Coast Guard can get involved or exercise its authority when there is a maritime labor controversy?" He answered, "It's my understanding that they cannot." Asked, then, what his "understanding" was based upon, Willecke answered, "My understanding is that the Coast Guard has told me, Mark Ruge [a Washington, D.C. attorney, whom Willecke characterized as "a lobbyist"] has told me, both, that it is Coast Guard policy that they cannot take sides in a labor dispute." No evidence was presented to refute that testimony by Willecke. In consequence, so long as the unified pilot management proposal could be portrayed, at least, as involving a labor dispute, then the Coast Guard's Office of Great Lakes Pilotage could be barred from taking any further action concerning that proposal, such as initiating notice-and-comment rulemaking. Indeed, Willecke acknowledged—"Yes, I did"—during 2001 having sent a letter to Commandant Admiral Loy of the Coast Guard, "espousing [Respondent's] position that if the Coast Guard exercised its authority to engage in a notice of proposed rule making about this new management proposal for the pilotage that the Coast Guard would be in violation of federal law[.]" In fact, despite the urging of American Great Lakes Ports, the Coast Guard has not initiated notice-and-comment rulemaking concerning the unified pilot management proposal.

The General Counsel alleges that, by refusing to continue negotiating with the Union, Respondent failed and refused to bargain in good faith, in violation of Section 8(a)(5) and (1) of the Act. Not so, argues Respondent. Pointing to the unified pilot management proposal, its impact on Respondent's business, and the Union's support and advocacy for its adoption, Respondent contends that it is the Union which has engaged in conduct which undermines the bargaining process contemplated by the Act, since that conduct gives rise to a conflict of interest, creating a clear and present danger to the bargaining process and, in addition, a breach of the Union's duty of fair representation owed to employees of Respondent for whom the Union is supposed to be the bargaining representative. Therefore, Respondent was, and is, "privileged in its refusal to meet so long as the [U]nion and its agents possess clear conflicts of interest" which "obstruct and frustrate any possibility of meaningful bargaining," its argument concludes.

For the reasons set forth in Section II, I conclude that Respondent's refusal to continue meeting with the Union does violate Section 8(a)(5) and (1) of the Act. That ultimate conclusion is based upon the penultimate conclusions that advocacy of regulatory reform does not create a *per se* conflict of interest, such that bargaining can be discontinued, and that there has been no showing here that the Union had been advocating the unified pilot management proposal as a vehicle for putting Respondent out of of business.

B. Pilotage Problems Leading to Proposals for Change

Not everyone was satisfied with the three-district, three-association pilotage system on the Great Lakes-St. Lawrence Seaway System. Halverson testified that "there had been pernicious problems in pilotage and . . . a lot of people were interested in seeing change." Since 1997 or 1998 the Office of Great Lakes Pilotage had conducted an annual meeting to discuss pilotage issues. Yockey testified that dissatisfaction " had reached a point that, by the January 30, 2001, meeting "the port community would not attend. They had little confidence in the pilots and they had little confidence in the Coast Guard's ability to straighten out the problems," so the ports simply "boycotted" that meeting.

Not only was the foregoing testimony by Halverson and Yockey uncontradicted, but Duluth Seaway Port Authority Executive Director Helberg—a witness seemingly neutral to the dispute in the instant proceeding and, further, a witness called by Respondent—gave testimony tending to corroborate that of Halverson and Yockey about dissatisfaction. "Pilotage has been a major issue for many, many years," testified Helberg, and "has been one that American Great Lakes Ports has been

considering and concerned about for several years," so American Great Lakes Ports has been "advanc[ing] or advocat[ing] changes in existing regulation or in some cases new regulation or legislation to make the system more efficient and more competitive." So far as the record discloses, neither Halverson, Yockey or any official of the Union had been involved in any such proposed changes prior to 2001.

The record is not left with Helberg's above-quoted, somewhat generalized description of complaints about pilotage on the Great Lakes-St. Lawrence Seaway System. There is no evidence of any particular complaints about pilotage in District 3, nor about Respondent. However, Helberg testified to "delays in . . . District 1, and many problems associated with pilotage operations in that district." That testimony by Helberg tends to corroborate Yockey's more-particularized testimony that District 1 pilots "had been delaying ships there for several different reasons, one of them being that if they spent too much bridge time that they wanted to be relieved at the Iroquois lock, and if there wasn't a relief there then they wouldn't take the assignment," with the result that "many ships were delayed." Beyond delays, testified Yockey, the Port of Cleveland had "lost ships that were diverted . . . two of them specifically that were coming to Cleveland were diverted to Philadelphia." Such a situation hardly furthered the objective of "protect[ing] existing water borne [sic] commerce" and "generat[ing] new water borne [sic] commerce," which Helberg testified were "the two mandates" of American Great Lakes Ports.

Despite that organization's above-mentioned feeling that the Coast Guard had been failing to take corrective action, the Office of Great Lakes Pilotage did initiate efforts to achieve correction. At its 1999 annual meeting it introduced the concept papers, mentioned in subsection A above, for consideration by those in attendance. The first one suggested that all three districts "use one dispatch service," which would "decrease redundancy [and] cut pilot association expenses with no reduction in pilotage service. . . ." Of course, it could also serve as one correction for lack of alternative pilots, whenever some current district's pilots would not accept particular assignments, through dispatch of a pilot from what is now a separate association.

The second concept paper suggested "establishment of a single pilot's association [which] would not only achieve economies of scale associated with billing and dispatch . . . [but] would also produce savings associated with the cost of the rental and maintenance of office space and utilities." Again, that solution would also enlarge the overall pool of pilots from which assignments could be made. The third concept paper suggested that all districts "use one billing service," thereby reducing "redundancy" and "pilot association expenses," but "with no loss of service."

Those same concept papers were once again circulated and discussed during the Office of Great Lakes Pilotage's early 2000 annual meeting. To that point, apparently, no effort had been made to initiate notice-and-comment rulemaking concerning any of the concept papers' suggestions. That is, there is no evidence that notice-and-comment rulemaking had been initiated, regarding any of the concept papers, through November of 2000. That would change by the end of the following month.

As mentioned in subsection A above, in the Federal Register for December 28, 2000, the Department of Transportation, Coast Guard Office of Great Lakes Pilotage published notice of meeting on January 30, the date of its annual meeting for 2001, and requested comment regarding "options for improving the safety, reliability, and efficiency of the Great Lakes Pilotage system." Session II of that meeting, states the Federal Register, would be devoted to, "Presentation and discussion of *Concept Papers* on centralized dispatch, centralized billing, and the possible advantages and disadvantages of combining the existing three pilotage Districts into one District or one Pilots' Association." As pointed out in the immediately preceding paragraph, so far as the evidence shows, this had been the first time that notice-and-comment rulemaking had been initiated concerning the concept papers. There is no evidence whatsoever that Halverson, Yockey or any other official of the Union had advocated that notice-and-comment rulemaking be initiated. Nor is there any evidence that any one of them had been consulted, or advanced any position, about initiating rulemaking on December 28, 2000.

The concept papers were discussed during the January 30 annual meeting. Willecke testified that, as a result of those discussions, he formed the opinion that the concept papers "were just going to basically die a death and go away," and, "so I never really considered them a real big threat" to Respondent's continued existence, in light of what had been said during the January 30 meeting. Yet, in the end, he never gave any unaided particularized testimony concerning what had been said, during the meeting, that led him to assertedly formulate such an opinion.

During surrebuttal Willecke was asked, "And do you remember testifying previously that [Office of Great Lakes Pilotage Chief Economist Lawler] had talked about what kind of managers you men were and *that as far as he was concerned the concept papers were not necessary at present*?" (Emphasis supplied.) To that "suggestive" question, see Advisory Committee's Note to Fed. R. Evid. Rule 611, Willecke answered, not surprisingly, "Yes." His answer was not surprising because it seemed that, as he testified about the unified pilot management proposal, he was attempting to portray that proposal as having revived what, by the time of its formulation and circulation, had become a dormant issue: the issue of pilotage reform.

Yet, when Willecke's earlier testimony is examined, none of it shows that Lawler had supposedly said during the January 30 meeting that "the concept papers were not necessary at present[.]" The remark that Willecke did attribute to Lawler, when testifying during Respondent's case-in-chief, was that he had "basically congratulated the pilots for doing such a good job because they had revised . . . the savings numbers, this last year, and said that we had done such a good job and become so efficient *that the savings isn't really what they had figured it would have been when they first proposed these*." (Emphasis supplied.) Now, such a comment is a far cry from Lawler having supposedly said that the concept papers "were not necessary at present[.]" That savings would not be as great, is not tantamount to saying that additional savings could not still be achieved by implementing one or more of the concept papers' suggestions. Moreover, it is somewhat inherently implausible to accept, as fact, that a relatively lower-level agency official,

such as a chief economist, would be voicing a firm opinion about abandoning proposed courses of corrective action, after they had already become a subject of notice-and-comment rulemaking. That is, there is no evidence that Lawler had been in a position to speak for the Coast Guard and its Office of Great Lakes Pilotage about a corrective action for relatively longstanding problems, ones which had led the ports to abandon the very meeting during which Lawler had supposed made the suggested remarks attributed to him during surrebuttal.

At no point during his nonsuggested, narrative account, during Respondent's case-in-chief, did Willecke claim that Lawler had said that the concept papers were no longer necessary. No other witness attributed such a purported remark to Lawler. Problems in District 1 had led to longstanding complaints about pilotage on the Great Lakes-St. Lawrence Seaway System. Notice-and-comment rulemaking had been instituted. Against that background, it seems somewhat cavalier for a lower-ranking official to abruptly announce abandonment of proposed courses of action that, approximately one month earlier, his agency had considered important to submit for public comment and consideration. That is, such a supposed flip-flop is inherently implausible. On the other hand, should Willecke be able to convincingly portray the concept papers as concepts that the Coast Guard felt should "just basically die a death and go away" as of January 30, then Respondent's position—that the unified pilot management proposal did not propose corrective action for viable pilotage problems, but only were motivated by intent to put Respondent out of business—would be strengthened, accordingly. In fact, that uncorroborated portrayal by him, one which is simply not consistent with the evidence regarding surrounding events, was not advanced convincingly.

C. Halverson's Proposal and Post-January 30 Events

In contrast, Halverson did provide convincing testimony regarding her reasons for having formulated and circulated the unified pilot management proposal. As already pointed out, there can be no question that, if adopted, that proposal would effectively put Respondent out of business. She denied expressly that her "not for profit organization" substitute, for the existing three-district, three-association system, had been motivated by an intention to eliminate Respondent as an association and as an employer. Rather, she testified that, based upon what had been occurring in District 1 and upon what she had read in the Federal Register for December 28, 2000, "I was concerned that if we didn't have a proposal in place that I felt protected the pilots that the Coast Guard may take some arbitrary type of action that would . . . not be in their best interest or not be what I think they would have wanted." Of course, one purpose of notice-and-comment rulemaking is to allow members of the public, of which Halverson is one, to make suggestions, so that more thorough consideration is given when rules are formulated or revised. Beyond that, Halverson has an interest more specific than simply that of one of many citizens. Her husband is a pilot and would be affected by any action, which the Coast Guard might take.

In addition, there is no evidence that the Union, or any of its officials, put Halverson up to formulating her unified pilot management proposal. To be sure, as she was doing so, she did confer with Baker and Yockey. Yet, she testified that she had also conferred with a number of officials of other organizations: Helen Brohel from the shipping associations, Fisher of American Great Lakes Pilots, and various District 2 and 3 pilots, such as Captain Phil Knetchel, District 2 president. Interestingly, she never claimed to have conferred with anyone from District 1, the source of most complaints about Great Lakes-St. Lawrence Seaway System pilotage. Obviously, her failure to do so was consistent with avoiding those who were creating problems, while trying to formulate an alternative that would effectively address those problems.

She finalized her proposal as she and her husband drove from Duluth to Cleveland, for the Office of Great Lakes Pilotage's annual meeting on January 30. After having done so, she faxed a copy to Helberg of Duluth Seaway Port Authority, gave a copy to Yockey as they drove through Jackson, Michigan, and gave copies to Captain Knetchel before arriving in Cleveland. Once in Cleveland, she gave copies to several people, including Baker. He, in turn, distributed copies to Brohel and to St. Lawrence Seaway Development Corporation Director Albert Jaquiz. Following the January 30 meeting, Halverson testified that she had "distributed [copies] to anyone who wanted a copy" of her proposal.

Significantly, neither Halverson nor any official of the Union gave a copy of the unified pilot management proposal to Willecke or any of Respondent's other limited partners. On the other hand, neither is there evidence that she or the Union had submitted a copy of that proposal to the Office of Great Lakes Pilotage or, generally, to any Coast Guard official. In short, there is no evidence that Halverson or the Union had actually participated in the comment portion of notice-and-comment rulemaking. In that respect, the best that can be said is that, as he acknowledged, Yockey had advocated "parts of" the unified pilot management proposal during the January 30 annual meeting. But, there is no evidence that he had actually submitted the entire proposal to the Office of Great Lakes Pilotage, nor otherwise to the Coast Guard. That seems to have been done by American Great Lakes Ports Executive Director Fisher.

From the evidence presented, it seems to have been Fisher who arranged separate February meetings in Washington, D.C., with Congressman James Oberstar of Minnesota and some of his staff, with Congressman David Obey of Wisconsin and some of his staff, and with Admiral North, Director of Pilotage Flyntz and Jeff High of the Coast Guard. Halverson, Yockey and Baker attended those meetings. But, there is no evidence that any one of them had played the slightest role in arranging for any of those three meetings to be conducted. To the contrary, Helberg testified that the idea for the trip to Washington, D.C., and the three meetings there, had been that of Fisher.

He and Fisher had "discussed the subject [of the unified pilot management proposal] prior to . . . making the trip," testified Helberg, and "tried to arrange our schedules for a series of meetings regarding the pilotage proposal," in particular "because of delays in . . . District 1, and many problems associated with pilotage operations in that district and because of a continuing desire on the part of many of us to try to find ways to improve the competitiveness of the system and flow of ships absent delays as much as humanly possible we were advocating for a new system, a reorganization of the system." Thus, while Yockey testified that he "met with Steve Pfieffer, the port di-

rector Cleveland, Jimmy Hartung," as well as with St. Lawrence Development Corporation Director Jacquez, following the January 30 meeting, there is no evidence that he or any other Union official, nor Halverson, had been involved in arranging the February meetings with two Congressmen and with the Office of Great Lakes Pilotage. So far as the evidence shows Baker, Yockey and Halverson had merely been persons asked to attend meetings arranged by officials of other entities, unrelated to the Union. Obviously, during those meetings, they advocated implementation of Halverson's proposal. But, there is no evidence that any one of them had done so for no reason other than to put Respondent out of business.

They were not the only ones who journeyed to Washington, D.C. to make a pitch in connection with proposals for pilotage change on the Great Lakes-St. Lawrence Seaway System. In opposition to any change, Willecke testified that, "I believe it was the end of February," he—and apparently other pilots, based on his use of the pronoun "we"—met with Congressman Oberstar, "people from Congressman Obey's office," and "with Admiral North." As a result of those meetings, Willecke gave certain testimony that should not escape some notice.

He claimed that he had become "very concerned," when he had been told during those meetings "that the [Union] had come among other industry people to support this proposal and to push for the Coast Guard to put this proposal out for public comment as a notice of proposed rule making as the first step in its adoption." Now, there is truly no basis in the record for concluding that the addition of the Union's support would somehow lead Congressional or Coast Guard officials to somehow accord greater weight to proposals for change, already being advocated by officials of organizations with their own interests in pilotage on the Great Lakes-St. Lawrence Seaway System. And Willecke's supposed concern was rendered even more suspect by his supporting explanation of an event "a few years ago where the Coast Guard wanted to transfer oversight to pilotage . . . to the St. Lawrence Seaway Development Corporation."

On that occasion, Willecke testified, there had been "a notice of proposed rule making," but "the pilots and many people on our side" concluded that "very legitimate comments against this transfer . . . were ignored." "So we knew that when there is a comment period they don't necessarily have to take the number of comments or the substance of comments," he further asserted. Really? Well, there is no evidence that any such proposal, to transfer pilotage-oversight to the St. Lawrence Seaway Development Corporation, had been implement, even submitted for notice-and-comment rulemaking. Obviously, the Coast Guard had not agreed with whoever was advocating for such a change. Equally obviously, Respondent, "pilots and many people on [their] side" had prevailed in connection with that proposal. So, that surely seems a poor precedent for an assertion of concern about the course that might be followed in connection with the unified pilot management proposal. Even had Willecke truly been concerned following his own Washington, D.C. meetings, the fact that the Union was one of a number of advocates for the unified pilot management proposal hardly shows that the Office of Great Lakes Pilotage would be somehow disposed to jump through a hoop now raised by the Union. For the Coast Guard, so far as the record shows, the Union was only one of a number of advocates on one side of a particular proposal for pilotage reform—reform that was already under active consideration, as evidenced by notice-and-comment rulemaking already undertaken on December 28, 2000. No evidence shows that that proposal's acceptability would not be evaluated on its merits, rather than on the basis of who was advocating its adoption.

One fact cannot be overlooked in connection with Willecke's testimony regarding his meetings in Washington, D.C. Willecke testified that it was his "understanding that" the Coast Guard cannot "get involved or exercise its authority when there is a maritime labor controversy," as pointed out in subsection B above. During his meeting with Admiral North, he testified, "they were very concerned that the [Union] was supporting [the unified pilots management proposal] and the pilots were not supporting it so they really didn't want to get involved in a dispute between the pilots and the labor organization." Perhaps consistent with that attitude, and with Willecke's correspondence described in subsection A above, no notice-and-comment rulemaking has been undertaken by the Office of Great Lakes Pilotage concerning the unified pilot management proposal.

As pointed out in that same subsection, American Great Lakes Ports has made an effort to force initiation of rulemaking procedures. While Halverson and Yockey continued to advocate the unified pilot management proposal as the year proceeded from spring through summer, it was American Great Lakes Ports which revised somewhat Halverson's proposal and initiated an August 1 meeting with Admiral Pluta, relatively newly-appointed Coast Guard Commandant for Marine Safety and Environmental Protection Assistant Commandant. According to Helberg, that meeting had been intended to help Pluta "understand and grasp the proposal and to answer his questions." "Steve Fisher and myself and Captain Yockey" had attended it, Helberg testified, as well as certain unnamed port directors. Asked who had invited Yockey, Helberg answered, "I presume it would have been Mr. Fisher," and there is no evidence showing otherwise. Certainly, there is no evidence that Yockey had promoted the meeting. Moreover, during that meeting, there is no evidence that Yockey had made any greater contribution, in support of the unified pilot management proposal, as revised by American Great Lakes Ports, than had Fisher, Helberg and the port directors in attendance.

After that August 1 meeting Fisher prepared and submitted a letter to "Great Lakes/Seaway System Stakeholder[s]," dated August 17. Attached to each letter was a copy of the revised unified pilot management proposal. In his letter, Fisher states that the revised proposal "was recently submitted to the United States Coast Guard *by ou[r] organization* with a request that it be published in the Federal Register for public review and comment." (Emphasis supplied.) Now, it is uncontested that the copy of that proposal received from the Coast Guard by Respondent, pursuant to request under the Freedom of Information Act, had the faxed notation on the top, "07/09/2001 10:19 FAX 724 3497 Jan Halverson." The telephone number is that of Halverson's sister, Carol Gentry. Left unclear is whether that particular copy of the revised proposal had been one sent directly to the Office of Great Lakes Pilotage by Halverson or her sister or, alternatively, a copy of the revised proposal returned to American Great Lakes Ports by Halverson or her

sister and, in turn, submitted to the Office of Great Lakes Pilotage by American Great Lakes Ports. After all, Fisher did tell the stakeholders that "our organization" had submitted the revised proposal "to the United States Coast Guard," along "with a request that it be published in the Federal Register for public review and comment." There is no reason not to take Fisher at his written word.

In connection with the above-quoted description of American Great Lakes Ports' request for publication in the Federal Register, Fisher told the stakeholders that "no commitment has yet been made," but that "we expect the U.S. Coast Guard to seek public comment on this document within the next few months." No one contends that such action had been taken as of the hearing, slightly two months after Fisher's letter. Nor is there any evidence showing why no notice-and-comment rulemaking had been undertaken regarding the revised proposal. The only reason suggested by the evidence is Respondent's written assertion to Admiral Loy that any rulemaking would embroil the Coast Guard in a labor dispute. If so, Respondent's assertion has effectively blocked further regulatory action on proposed correction of pilotage problems for the entire Great Lakes-St. Lawrence Seaway System.

D. Respondent's Motivation for Refusing to Continue Bargaining with the Union

Willecke agreed that he had been the official of Respondent who had made the decision to cease further bargaining with the Union as of March 7, until the conditions set forth in Respondent's letter of that date were satisfied, as set forth in subsection A above. By way of explanation for that decision, he testified that, "I saw this [unified pilot management] proposal as taking management away from our company and putting [Respondent] as an employing entity out of business," by "form[ing] a separate management company that would take management away from the three pilot associations that currently managed their own businesses." Moreover, he testified that, by the time that he had made that decision, he had been aware of certain remarks made by Yockey, during telephone conversations on March 1 and on March 7, stating the Union's intention to put Respondent out of business through the unified pilot management proposal. As a result of the second of those telephone conversations, between Yockey and Willecke on March 7, Willecke testified that he had telephoned Respondent's co-counsel and "told him that I was absolutely positive that the [Union] was involved in the [unified pilot management] proposal and that I thought we should break off negotiations." Thus, the origin of the March 7 letter to the Union, described in subsection A above.

There can be no dispute that, during two March telephone conversations, Yockey had said that he wanted to put Respondent out of business. Were nothing more said, those remarks might demonstrate a malevolent intention that would justify an employer's cessation of further bargaining. But, more was said during those two conversations. Yockey complained about the recent demotion of Senich and discharge of Halverson, both employee-negotiators for the Union, as described in subsection A above. He protested conduct by Respondent which, in his opinion, constituted direct bargaining with employees represented by the Union and failure to bargain in good faith. It was Harris and, then, Willecke who injected discussion of the unified pilot management proposal into each of their telephone conversations with Yockey. Against that background, there is some basis for inferring that Yockey made his remarks as a form of stick that he could thrust into Respondent's eye, given the above-mentioned complaints and protest that he was voicing.[3]

The telephone conversation with First Vice President Harris occurred on March 1. After a brief exchange of personal remarks, Yockey protests Respondent having gone "to the employees and saying we fired Jan [Halverson], and we did this and now we're going to change this, that's all gotta be negotiated . . . to get Jan's job back or . . . Rudie's job back," accusing Respondent of "negotiating directly with the people." After Harris initiates discussion of "changing the insurance," Yockey says he has no "problem" with that, but "what I'm talking about here is . . . that's really directly negotiating with the employees," adding "those other people are innocent victims here," and "you got a proposal or something we'll sit down and talk about it."

A further exchange occurs about that subject, after which Harris raises the subject of "some people" saying "that I wanted them all terminated at the meeting, and that's an outright lie," to which Yockey says that he possesses "proposals from [Respondent's co-counsel and chief negotiator] to eliminate the Superior workforce," and offers to show those proposals to Harris. Harris denies that he had said that. The two of them continue discussing that subject until Yockey mentions additional unfair labor practice charges. Yockey then says, "I just wish you guys would talk, I don't want you talking to the employees directly about changes that are . . . negotiable." Discussion of that subject continues, with Yockey claiming that "five or six times" he had received calls from unit employees, reporting that Harris had been talking directly to them about employment changes, and that he had told those employees to "tell him [Harris] to come through me, and I said I'll call him and tell him myself." Harris continues to deny having bargained directly with employees represented by the Union.

Next, Yockey accuses Harris of having "a letter solicited by yourself," but Harris denies having solicited it. That exchange continues until Harris abruptly changes to subject, by introducing the subject of the unified pilot management proposal. "Well, what are you guys doing in Washington?" he asks, "What do you have to do with this proposal that's been going around—the 18-page thing? Are you guys part of that?" To those questions, Yockey answers, "The proposal is the Coast Guard's now, it became property of the Coast [G]uard when we gave it to them," and "now they've taken it and they're

[3] During the hearing I excluded that tape and transcript of Willecke's March 1 telephone conversation with Harris. Harris testified about what Yockey had said and, at that point, it seemed that the tape and transcript were no more than "cumulative evidence," within the meaning of Fed. R. Evid. Rule 403. In its brief, Respondent moves that I reconsider that ruling. In fact, it does appear that Yockey's telephone remarks, both to Harris and Willecke, should be evaluated in context of the totality of what had been said during each of those telephone conversations. Therefore, I grant Respondent's posthearing motion, reverse my ruling at hearing, and receive Respondent's Exh. Number 11(a) and (b).

gonna . . . make it work." Harris opines, "It's not going to be for a while, it sounds like," and Yockey retorts, "Hopefully it'll be done before all of my f—king people are gone," and he acknowledges that the Union is "part of the [unified pilot management] proposal."

The two of them argue over the substantive merits of that proposal. For example, when Harris asserts "that's to take us all over," Yockey asks, "do you see me sitting on the Board? No, you guys are worried about everything else." That turns into an argument over Respondent's decision to hire its chief negotiator. Yockey, again, accuses Respondent of trying to fire unit employees; Harris denies that accusation. Against that background of complaint about Senich's demotion and Halverson's discharge, protest about direct bargaining, and accusation of hiring a highly-paid chief negotiator to get rid of unit employees, Yockey makes the remarks to which Respondent points in advancing its defense.

"I'm taking it right out of you guys hands. Why do you think I made the proposal? I don't want to sit around and negotiate with you guys—the cheapest sons of bitches I've ever seen in may life," Yockey asserts, "when 20 good people are being put on the streets—no way—and you're paying 30 grand for an attorney?" Yockey continues linking such expressions of dissatisfaction to Respondent's negotiating posture: "you guys gotta walk up to the plate and say this is what we want, this is what we [sic] gonna do because . . . the only dog I got in this fight is taking the management . . . part away from you because you're incapable of doing it," adding, "I made you a proposal that saved you $128,000 over five years, gave my people a 3% bump and you told me to shove it up my ass." After Harris denies knowledge about any of that, Yockey renews his accusation about Respondent trying "to put my people on the street."

Harris says that Yockey is "only hearing one side of it," and renew his own protest about "things said about me that I didn't say," to which Yockey renews his complains about direct dealing and demotion of Senich and discharge of Halverson, in the process characterizing Respondent's conduct as unfair labor practices. In response, Harris again injects the subject of the unified pilot management proposal, asking "how come they didn't tell us about their big plan and everything? You know that's what really makes a lot of people mad." Yockey retorts, "Too bad. Why didn't you tell me about your big plan to put five of my people on the street?" He again complains about Respondent's asserted "high profile labor lawyer, labor busting attorney," to whom Respondent is supposedly paying "more than my people would have got in raises."

Further exchange results in Yockey saying, "all I'm interested in pilotage anymore is that my pilot boat operators in Port Huron I don't have to fight with and this thing is going to go to another company, and pilots won't manage it," with the two then exchanging barbs over whether or not Halverson's proposal will or will not lead to job losses, including in District 1 and 2. Then, they resume arguing over the demotion, discharge, and cost of Respondent's co-counsel and chief negotiator.

Harris once more raises the subject of the unified pilot management proposal and the asserted fact that "everything was so secretive." Yockey resumes his direct-bargaining accusations, saying that one employee was being offered both Senich's and Halverson's former jobs. Harris denied knowledge of that, pointing out, "We have to hire another person." Effectively, Yockey accuses Respondent's officials of lying; Harris denied being a liar. Yockey accuses Respondent of lacking "character" and "integrity," and of trying to get rid of the Union; Harris denied those accusations. Another exchange ensues over Respondent's choice of chief negotiator, follow by an exchange about, in essence, the characters of each. Personal comments conclude the conversation.

Both orally and in writing, Harris reported to Willecke some of what Yockey had said during that telephone conversation. Since it had been Willecke who made the decision to suspend further bargaining with the Union, what he had been told by Harris is material. Willecke testified that he heard orally from Harris that the latter had been told by Yockey that "the pilots were not fit to manage and that . . . his main motivation was to take management away from pilots and put it with another entity and not with the pilot association." According to Willecke, Harris also reported that the Union "is certainly according to Captain Yockey behind this [unified pilot management] proposal, wants to . . . take management away from" Respondent. Willecke further testified that Harris had reported that Yockey said, "I don't want to negotiate with you cheap SOB's [sic] and all I'm interested in is taking management away from you people."

In a memorandum to Yockey dated March 1, Harris states, "I asked him [Yockey] point blank what he was doing in Washington," and Yockey answered, "it was in Coast Guards [sic] hands. . . . Going to take advisory committee out and hope it will be completed before we get rid of all his people." The memorandum further states that Yockey said, "I tell you right now you use our assets and you go and hire a guy like [co-counsel, chief negotiator] to put 5 people on the street. I don't want to sit down and negotiate with you people the cheapest son of a . . . in the world. I am taking management away from you people because you are incapable of doing it." The memorandum also attributes to Yockey: "All I am interested in is for pilotage to go to another company so pilots wont [sic] manage it." Nevertheless, the memorandum also mentions the sources of Yockey's criticisms and protests. It states that Yockey had said that, "If we don't get Jan and Rudy back you have problems," and had warned, "The plan is no secret now it will be out in a public forum. Don't talk to my people don't go behind my back."

Willecke was not left with a secondhand account of how Yockey felt. He participated in his own telephone conversation with Yockey on March 7. During that conversation, Yockey expressed all of his complaints and protests about Senich's demotion, Halverson's discharge, direct bargaining, and the course of bargaining. Thus, the conversation began with Yockey warning, "with Jan being fired and everything, and our negotiations still going on, I want you to be careful what you say to the employees," adding that everything about Halverson's discharge will "all come out in court," and "that's a First Amendment issue." Yockey continues by repeating that warning: "I want to put you on notice about that—be careful what you say to the people, and I think our negotiations should be starting pretty soon." Yockey continues, "Anything you say to them regarding how we're going to fill these billets and stuff,

that's up to us—you didn't follow no grievance procedures here . . . ever." When Willecke asks if Yockey was "saying that we can't fill the positions?" Yockey answers, "I'm saying you can fill the positions, but you got to do it through me. You're not going to . . . fill two jobs with one person."

To that point in their conversation, it is fair to say, Yockey had been doing no more than repeating his criticisms, protests, and complaints voiced to Harris 6 days earlier. Regardless of the merits of each, Yockey was expressing the Union's view of what had occurred and what was occurring. His specific remark about "our negotiations should be starting pretty soon," shows that he did specifically contemplate resumption of negotiations for a collective-bargaining contract to succeed the 1997–2000 one. Yockey continues in that vein by expressing fear that Respondent's employees were going to "get fired" and asserting that "whatever happens . . . it's going to be done through the Union." At that point, as had Harris, Willecke abruptly changes the subject, saying that he wanted to ask about the unified pilot management proposal.

Willecke asks whether Yockey had "anything to do with that?" and Yockey replied that he "did." Willecke asks, "What was your part in it?" and Yockey claims, "It was a major part." Obviously, that was puffing, given that the Union was but one of a number of sources consulted by Halverson, who formulated and finalized the unified pilot management proposal. There is no evidence showing that Yockey or the Union played any "major part" in that process, nor evidence suggesting that they had played any greater role than others consulted by Halverson.

After answering that he played "a major part," Yockey makes an obvious dig at Willecke, based on Halverson's discharge, by asking, "Are you gonna fire me?" Willecke answers that he was merely "asking what your part was in it," and Yockey asserts, "Yeah, I want the management functions taken away from you guys," reaffirming that attitude—"yeah"—when Willecke asks, "You do?"

Willecke pursues the subject, asking, "Ed Harris told me that [you] said we're not fit to manage, is that right?" "I don't think so," Yockey answers, but then adds, "I don't know where you people come off . . . I mean I've never dealt with people like you . . . I mean when you tell me to take $128,000 over five years savings, giving everybody a raise, shove it up my ass, you guys got a different agenda." In other words, Yockey is not saying that Respondent is a bad manager because of how it operates pilotage, but because of its asserted conduct during negotiations. That is further shown by what next is said. Willecke disputes Yockey's answer, denying that "anybody said that," and Yockey retorts, "But there was no agreement reached—that's the bottom line." And Yockey then asks "when the next meeting" would be, to which Willecke responds that he would "have to talk to our people, and see when we can meet, OK?" Once more, Yockey admonishes that he does not want Respondent "talking to my people, telling them what to do, tell[ing] them they've got to take this or they're done," and "be careful what you say to the people because negotiations are going on, unfair labor practices are going to be flying around here," and, "My people are afraid to even answer your telephone calls."

The conversation concludes with a dispute over whether future negotiations were to be conducted in Duluth. As to that Yockey says, "I can't take $10,000 from Rudy and ask him to travel, and I can't have Jan who has no job, ask her to travel," followed by further exchange over how Yockey calculated $10,000 for Senich. All else aside, while Willecke did hear from Harris that Yockey had said he did "not want to negotiate with you cheap SOBs," Willecke's own conversation with Yockey showed that, whatever its preference, the Union did want to resume negotiations for a contract to succeed the 1997–2000 one.

As pointed out at the beginning of this subsection, Willecke testified, in support of his motivation for discontinuing further negotiations, that he viewed the unified pilot management "proposal as taking management away from our company and putting [Respondent] as an employing entity out of business," by "form[ing] a separate management company that would take management away from the three pilot associations that currently managed their own business." He agreed that one of the concept papers also provided for a single association, in place of the three pilots' associations. As to that, however, he testified, "The way I read [the second of the Concept Papers] the pilot associations could form something of their own and still retain control." Of course, even that course would "tak[e] management away from" Respondent, thereby putting it "as an employing entity out of business."

Willecke made another effort at distinction, when he testified, "Well, the concept papers just deal with cost savings and they were just that, concepts. They were ideas," adding, "The director had said he put them out there to stimulate discussion," whereas the unified pilot management proposal "is an actual proposal that--it doesn't just have cost savings in it. It also has taking management away and eliminating the three pilot associations." But, obviously, the concept papers had advanced beyond the point of merely "stimulat[ing] discussion," once there was publication in the Federal Register of December 28, 2000. Moreover, given the situation in District 1, more than cost saving was involved. Willecke never denied that he had understood as much.

II. DISCUSSION

Shorn of all rhetoric, to conclude that a conflict of interest exists, for no reason other than a bargaining representative's support for regulatory reform detrimental, even fatal, to an employer's continued operations, is to compel labor organizations to make a choice—between continuing to represent employees who have chosen representation by them and, conversely, pursuing lawful interests outside the collective-bargaining-grievance settlement context—that involves important public policy considerations. At a threshold level, there is a "strong public policy favoring the free choice of a bargaining agent by employees which should not be lightly frustrated," *Schmerler Ford, Inc. v. NLRB*, 424 F.2d 1335, 1339–1340 (7th Cir. 1970), cert. denied 400 U.S. 823 (1970), given "the right to self-organization, to . . . join, or assist labor organizations, to bargain collectively through representatives of their own choosing," accorded by Congress in Section 7 of the Act.

Those rights transcend simply benefits accorded to employees. They implicate broader policy considerations. Congress

made plain its intention, in according to those rights to employees, "to eliminate the causes of certain substantial obstructions to the free flow of commerce . . . by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of . . . designation of representatives of their own choosing for the purpose of negotiating the terms and conditions of their employment," in Section 1 of the Act. Thus, any rule which too-readily erases employee-choice of a bargaining representative, by preventing it from bargaining with employers of units of employees, effectively undermines those overall policy objectives.

Consistent with those policies, the Board and the Courts have exercised great care whenever confronted with claims of conflict of interest on the part of bargaining representatives. They impose "a considerable burden on a nonconsenting employer . . . to come forward with a showing that danger of a conflict of interest interfering with the collective bargaining process is clear and present." *NLRB v. David Buttrick Co.*, 399 F.2d 505, 507 (1st Cir. 1968). Accord, *General Electric Co. v. NLRB*, 412 F.2d 512, 517 (2d Cir. 1969). "Hypothesis and speculation are not a sufficient foundation on which to erect a barrier against" bargaining, or continued bargaining, with employees' chosen collective-bargaining representatives. *National Food Stores of Louisiana*, 186 NLRB 127, 128 (1970).

For example, in *Bausch & Lomb Optical Co.*, 108 NLRB 1555 (1954), the bargaining representative "actually owned and controlled a business enterprise in the same industry and locality as the employer, in direct competition with the employer." Thus, "success of one [enterprise] could well mean the failure of the other," and "the Union might be sorely tempted in negotiations to make intemperate demands . . . under the guise of performing its function as bargaining agent, which would redound to the benefit of its company at the Respondent's expense" (at 1560)—especially should a work stoppage ensue—and that situation "renders almost impossible the operation of the collective bargaining process." at 1559. "[T]he Union by becoming the Respondent's business rival has created a situation which would drastically change the climate at the bargaining table from . . . [one of] reasoned discussion . . . to one in which, at best, intensified distrust of the Union's motives would be engendered." (Footnote omitted.) at 1561.

"The principles underlying the conflict-of-interest doctrine are not limited to a factual situation in which the employer and the union are in the same business." *St. John's Hospital & Health Center*, 264 NLRB 990, 992 (1982). The union in that case operated a nurse-registry service—as a "chartered nonprofit corporation," as opposed to a hiring hall—referring nurses to the employer's hospital and, as well, receiving referrals of patients by the employer. Thus, rather than operating a competing business enterprise, the union in that case was a supplier/customer of the employer with whom it was bargaining. Nevertheless, the situation presented a nexus between the financial fates of both enterprises and the collective-bargaining process, as well as with the quality of representation for employees whom that union was supposed to be representing fairly. The "financial interests in maintaining and enhancing its 'customer' relationship with the Employer has created an 'ulterior purpose' that conflicts with the requirement that a collective-bargaining agent have a 'single-minded purpose of protecting and advancing the interests' of unit employees," and, on the other hand, the employer "has a right to engage in collective bargaining which is not influenced by interests the bargaining representative may have outside its employee representative capacity." at 993, quoting from *Sierra Vista Hospital, Inc.*, 241 NLRB 631, 634 (1979).

In other words, as in competing-enterprise situations, the Board focused on a union's "disinterested representation" of employees whose interests that union was supposed to pursue with "a single-minded purpose," through "an arm's-length bargaining relationship" with those employees' employer (at 992-993). Disqualifying conflict of interest was also held by the Board to exist where there was a debtor-creditor relationship between employer and bargaining representative. *Garrison Nursing Home*, 293 NLRB 122 (1989). In such situations, "there existed an inherent danger . . . that the union official would make bargaining demands or grant concessions that would subordinate the unit employees' interests to those of his own personal business interests." *Teamsters Local 2000*, 321 NLRB 1383, 1385 (1996).

To be sure, the Board has mentioned "distrust of the Union's motives," *Bausch & Lomb Optical Co.*, supra, on the part of the employer, in resolving conflict of interest contentions. The fact is, however, that distrust by parties of opposing parties' motives, are not all that uncommon in the context of collective bargaining. The crucial focus of analysis in these cases is bargaining representatives' ability to pervert the collective-bargaining process, by operating through that process to directly promote interests ulterior to those of fairly and single-mindedly representing employees of employers with whom those bargaining representatives are bargaining.

Here, there is no evidence that the Union operates, or ever intends to operate, a pilotage enterprise in competition with Respondent. Nor is there evidence that the Union is either a supplier/customer of Respondent or, beyond that, a creditor of Respondent. Furthermore, there is no evidence that the Union operates any type of enterprise that would naturally give rise to an inability to bargain single-mindedly on behalf of unit employees of Respondent represented by the Union or, in some other fashion, that would naturally compromise the collective-bargaining process as contemplated by the Act. Even so, Respondent contends that, through the unified pilot management proposal and support for its implementation as a regulation, the Union is seeking to accomplish no more than putting Respondent out of business. In fact, the Board has concluded that the conflict-of-interest doctrine does apply where a bargaining representative seeks to utilize the bargaining process as a vehicle for putting an employer out of business or, at least, eliminating a portion of that employer's business.

In *Catalytic Industrial Mainentance Co.*, 209 NLRB 641 (1974), for example, the union "sought in negotiations with [a general contractor] to eliminate the subcontracting of the [subcontractor's] work and to transfer the [subcontractor's] bargaining unit employees to" the general contractor, *CMT, Inc.*, 333 NLRB 1307, 1308 (2001), where the union represented employees of both employers. In *Valley West Welding Co.*, 265 NLRB 1597 (1982), a union, supposedly representing employees of both general and subcontractors, obtained the general contractor's "agreement to limit the subcontracting, thus result-

ing in a loss of work for the [subcontractor's] employees." *CMT Inc.*, supra. These cases provide some basis for Respondent's contention that, by advocating regulatory change that would effectively put Respondent out of business, the Union created a conflict of interest sufficient to disqualify it from meaningful bargaining on behalf of Respondent's support-staff employees.

Yet, there are significant differences between those two cases and the situation presented here, in connection with the unified pilot management proposal. Both in *Catalytic* and in *Valley West*, the unions involved accomplished a benefit for units of employees at the expense of other units. Here, there is no other employee-unit, represented by the Union, that would benefit from implementation of the unified pilot management proposal. Moreover, implementation of that proposal cannot be accomplished through the collective-bargaining process. The only way that that proposal can be implemented is through action by the Coast Guard or, perhaps, through legislation passed by Congress and signed by the President of the United States. Those alternatives present their own policy considerations, transcending the above-mentioned ones arising under the Act.

Every entity, like every person, has a right to petition Congress and regulators for legislative and regulatory, respectively, reform. With specific respect to labor organizations, the Supreme Court has pointed out that "labor's cause often is advanced on fronts other than collective bargaining and grievance settlement within the immediate employment context." *Eastex, Inc. v. NLRB*, 437 U.S. 556, 565 (1978). True, that point was made in connection with legislation. Yet, there is no reason in logic for concluding that the Court would reach a contrary result when considering regulation by Federal agencies, such as the Department of Transportation and Coast Guard. Indeed, allowing maximum public input into regulatory formulation and implementation is a purpose for notice-and-comment rulemaking. Beyond that, such input serves the additional purpose of permitting regulatory agencies to sort through a greater array of comments, thereby facilitating formulation of better regulations, at least in theory. As a result, great care must be exercised in evaluating any application of the conflict-of-interest doctrine that would inherently undermine those policy considerations.

This case presents a clear illustration of the length of time that it can take for regulatory-change to be implemented. The concept papers had been under consideration for 2 years before notice-and-comment rulemaking was even initiated. By the time of the hearing, 10 more months had elapsed. And during that time, notice-and-comment rulemaking had not even been initiated regarding the unified pilot management proposal, though the American Great Lakes Ports had been pressing for its initiation, as Fisher informed the stakeholders. Indeed, that may never happen, certainly if doing so continues to be portrayed as a maritime labor dispute. There is no reason to conclude that passage of legislation can be accomplished with any greater degree of dispatch, where the subject is not a matter of pressing national concern.

To allow conflict of interest to suspend a bargaining representative's ability to represent employees who have chosen it as their representative, while legislative or regulatory change is under consideration and moves through the process, would be to deprive employees of representation of their choice for a substantial period of time. Even where a bargaining representative supports legislation or regulation detrimental, or possibly fatal, to the employer's continued existence, there is no guarantee that legislators or regulators—both free from control by bargaining representatives—will eventually adopt the particular legislation or regulation that a bargaining representative is supporting. Meanwhile, employees will have been deprived of the representation supposedly guaranteed them by the Act and, in turn, needed to promote the free flow of commerce. Therefore, I conclude that no conflict of interest can be said to exist solely because a bargaining representation advocates legislation or regulation that operates to an employer's detriment, without at least some more specific showing of detriment to the collective-bargaining process and the employees whom that bargaining representative is supposed to be fairly representing.

Respondent contends that it has made such a showing. In advancing that contention, it points to some of the comments made by Yockey to Harris on March 1 and to Willecke on March 7, as quoted in section I.D., supra. Indeed, viewed in isolation, comments such as, "I'm taking it [pilot management] right out of you guys hands. Why do you think I made the proposal? I don't want to sit around and negotiate with you guys," as make to Harris, do tend to support a contention that the Union had become involved in the regulatory process for no reason other than to put an end to Respondent. So, too, does a statement such as, "I want the management functions taken away from you guys," as Yockey told Willecke. Yet, those remarks were not made in isolation.

They were remarks made in the course of overall conversations during which Yockey was complaining, in general, about the bargaining relationship between Respondent and the Union: about the detriment which Respondent had visited upon the only two employee-negotiators, about asserted direct bargaining in which Respondent was engaging, about conduct which was causing failure to achieve agreement on terms for a collective-bargaining contract to succeed the 1997–2000 contract. In evaluating that overall context, it matters not whether there was actual merit to Yockey's complaints and protests. The crucial point is that there was an overall conversation about bargaining and lack of progress in bargaining. In the course of that conversation one party made remarks which foreseeably would upset the other party, thereby leaving the latter as upset by those remarks as the party making them had already become, by virtue of improper conduct assertedly engaged in by the party to whom those remarks were directed.

That is hardly a novel situation arising during an overall bargaining context. Indeed, "the Board is especially careful not to throw back in a party's face remarks made in the give-and-take atmosphere of collective bargaining." *Logemann Bros. Co.*, 298 NLRB 1018, 1021 (1990). That is so because according undue weight to "mere bargaining rhetoric and posturing," concurring opinion in *Altorfer Machinery Co.*, 332 NLRB 130, 131 (2000), would inherently undermine "the Act's strong policy of fostering free and open communications between the parties," by paying "too close an ear to the bluster and banter of negotiations." *Allbritton Communications*, 271 NLRB 201, 206 (1984), enfd. 766 F.2d 812 (3d Cir. 1985), cert. denied 474

U.S. 1081 (1986). As an objective matter, there can be no doubt that Yockey was engaging in "bluster and banter" when he spoke with Harris and, then, Willecke.

There is no evidence whatsoever that it had been the Union who had "made the [unified pilot management] proposal," as Yockey told Harris. In fact, it had been Halverson who had made the proposal. There is no evidence whatsoever that the Union in any way had influenced her initial decision to formulate that proposal. Once she had made that decision on her own, she did consult with the Union about what type of proposal she would formulate. But, the Union was only one of many persons and entities with whom Halverson consulted as she crafted her proposal. There is simply no evidence that the Union influenced the content of her proposal to any greater extent than did other with whom she consulted. As an objective matter, it cannot be concluded that Yockey or any other official of the Union had "made the proposal," nor even that any one of them had submitted her proposal" to the Coast Guard. So far as the evidence reveals, as described in section I.C., supra, that had been done by American Great Lakes Ports, specifically by its Executive Director Fisher, as set forth in his August 17 letter to stakeholders. There is no evidence that Fisher, or any other official of American Great Lakes Ports, had even consulted with the Union before it submitted the revised unified pilot management proposal to the Office of Great Lakes Pilotage.

Beyond that, whatever Yockey might have said about "management functions [being] taken away from" Respondent, that type of remark appears to be the type of "bluster and banter" that would naturally follow from a bargaining representative's reactions to demotion of one employee-negotiator and discharge or the other, and to perceived bypassing and direct bargaining on the part of the employer, as well as perceived conduct impeding progress during negotiations. There seems no reason to infer that Yockey had not sincerely held those views. Given those views on his part, it seems as logical to infer that he was protesting the management as conducted by Respondent in context of the bargaining, as to infer that he truly believed that Respondent was poorly managing pilotage in District 3. To the contrary, the poor management of pilotage seems to have existed only in District 1, but not in District 3.

Also evidencing no more than "bluster and banter" were Yockey's remarks about not wanting to negotiate with Respondent. Obviously, he was upset about what had been happening, especially the demotion of one employee-negotiator and the discharge of the other. As an inherent matter, such actions would obviously upset a bargaining representative's agents and, in turn, lead them to be unhappy about having to continue bargaining with such an employer, especially where those agents believed that that employer was engaging in direct bargaining with employees and in conduct that was frustrating the bargaining process. Such unhappiness, however, hardly demonstrates unwillingness to continue the process of collective-bargaining. To the contrary, implicit in accusations of direct bargaining is the desire to be bargained with, rather than being bypassed by direct bargaining with employees. More importantly, Yockey specifically asked, "when the next meeting would be," and discussed with Willecke the location of the next bargaining meeting. Obviously, despite any words to the contrary, Yockey wanted Willecke to bargain with him and, further, Willecke had to have understood that another negotiating meeting was sought by Yockey.

Two objective facts had to establish even more conclusively to Willecke that the Union was not acting solely to put Respondent out of business. First, had that it been its intention, it could have petitioned to have Respondent decertified as the District 3 pilot association, in the same fashion as had occurred during 1992 when Respondent replaced a decertified association. Second, it could have sought to have individual pilots certified to operate in District 3, as was done during 2001 in District 1, thereby at least cutting into Respondent's business. But, there is no evidence that the Union, or any of its officials, had pursued either course.

It is difficult to ascertain how the collective-bargaining process could have been euchred in some fashion by the Union, so that it would somehow foster adoption and implementation of the unified pilot management proposal, as revised by American Great Lakes Ports, by the Coast Guard's Office of Great Lakes Pilotage. Halverson denied that she had formulated that proposal with the intention of putting Respondent out of business. Of course, that would have been one result of regulatory-adoption of her proposal. Still, Halverson's denial seemed credible, as she uttered it. Indeed, as the wife of a pilot, Halverson had a particular interest in any reform of pilotage on the Great Lakes-St. Lawrence Seaway System. And her proposal was not some sort of initiation of pilotage reform. Reform was already underway by the time that she and, later, the Union became involved in formulating a reform proposal, as an alternative to those advanced in the concept papers. And her proposal was not confined to District 3. It encompassed pilotage operations on the entire Great Lakes-St. Lawrence Seaway System, just as had the notice-and-comment rulemaking of December 28, 2000.

As described in section I.C., supra, Willecke attempted to portray pilotage-reform as a dead issue by January 30. But, that attempt was not advanced credibly. All else aside, it tends to be refuted absolutely by initiation of notice-and-comment rulemaking, through the Federal Register of December 28, 2000. It simply seems inherently illogical that such publication would have been initiated, only to have the Office of Great Lakes Pilotage abruptly reverse course little more than a month later. In fact, as of January 30, the ports were so upset by the ongoing problems in District 1 that they boycotted the very meeting during which Willecke claimed, without the least corroboration, that the Office of Great Lakes Pilotage's chief economist had supposedly withdrawn further support for the concept papers. I do not credit Willecke. It seemed that he was making an effort to portray Halverson and the Union as having resurrected, through the unified pilot management proposal, a regulatory process that was dead and would not have been pursued, but for their introduction of that proposal.

In fact, there is no evidence that either Halverson or the Union had submitted that proposal to the Coast Guard. Beyond that, had there no longer been a perceived continuing need for some sort of reform throughout the entire Great Lakes-St. Lawrence Seaway System, not simply in District 3, it seems unlikely that two congressmen and the assistant commandant for Marine Safety and Environmental Protection would so will-

ingly have met with industry, union representatives, and Halverson during February and, in the case of the newly-arrived assistant commandant, during August. There is no evidence whatsoever that the Union, or any of its agents, had arranged for any one of those various February and August meetings. So far as the record discloses, all of that was generated by American Great Lakes Ports. The Union was invited to attend. Aside from its endorsement of the unified pilot management proposal, however, its role was essentially that of active spectator at a show being conducted by industry representatives.

In sum, in view of the totality of the evidence, there is no basis for concluding that the Union was supporting and advocating the unified pilot management proposal, and its revision, for no reason other than to put Respondent out of business. Moreover, there is no nexus between support and advocacy for that proposal and continued negotiations, such that it can be said that the latter would be conducted to achieve adoption of the former. Finally, I have no doubt that Willecke, who made the decision to suspend bargaining, realized those points—that the Union was not trying to put Respondent out of business, and that neither meaningful bargaining nor effective representation of unit employees would be somehow compromised by any ulterior motive, such that it could be said that, during bargaining, the Union would not be acting for the single-minded purpose of advancing the interests of unit employees whom it represented. On the other hand, while not needed to resolve the ultimate issue presented here, it is difficult to avoid the conclusion—and it should not go unstated—that Respondent's entire course of conduct seems aimed at frustrating further regulatory reform, by creating and advancing a labor dispute as a means for deterring the Coast Guard from proceeding with regulatory change that, it was told by Respondent, involved a dispute between management and labor.

CONCLUSION OF LAW

Western Great Lakes Pilots Association has committed unfair labor practices affecting commerce, by failing and refusing to continue bargaining with International Longshoremen's Association Local 2000, Great Lakes District Council-Atlantic Coast District, as the exclusive collective-bargaining representative of employees in an appropriate bargaining unit of all full-time seasonal and nonseasonal nonpilot employees employed by Western Great Lakes Pilots Association; excluding guards, supervisors, and managers as defined by the Act, as amended, thereby violating Section 8(a)(5) and (1) of the Act.

REMEDY

Having concluded that Western Great Lakes Pilots Association has engaged in unfair labor practices, I shall recommend that it be ordered to cease and desist therefrom and, further, that it be ordered to take certain affirmative actions to effectuate the policies of the Act. With respect to the latter, it shall be ordered to bargain in good faith with International Longshoremen's Association Local 2000, Great Lakes District Council-Atlantic Coast District—as the exclusive collective-bargaining representative of employees in an appropriate bargaining unit of all full-time seasonal and nonseasonal nonpilot employees employed by Western Great Lakes Pilots Association; excluding guards, supervisors and managers as defined by the Act—on terms and conditions employment and, if an understanding is reached, embody it in a signed agreement.

On these findings of fact and conclusion of law and on the entire record, I issue the following recommended[4]

ORDER

The Respondent, Western Great Lakes Pilots Association, Superior, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively in good faith with International Longshoremen's Association Local 2000, Great Lakes District Council-Atlantic Coast District, as the exclusive collective-bargaining representative of employees in an appropriate bargaining unit of:

> All full-time seasonal and non-seasonal non-pilot employees employed by Western Great Lakes Pilots Association; excluding guards, supervisors, and managers as defined by the Act, as amended.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain in good faith with the above-named labor organization, as the exclusive representative of all employees in the appropriate bargaining unit set forth in paragraph 1(a) above, and embody any agreement reached in a written contract.

(b) Within 14 days after service by the Region, post at its Superior, Wisconsin and DeTour Village, Michigan offices and places of business, copies of the attached notice marked "Appendix."[5] Copies of the notice on forms provided by the Regional Director for Region 18, after being signed by its duly authorized representative, shall be posted at those offices and places of business by Western Great Lakes Pilots Association, and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by it to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, it has gone out of business or has closed its Superior or DeTour Village offices and places of business, or either of them, Western Great Lakes Pilots Association shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by it at the closed office and place of business, or offices and places of business, at any time since October 13, 2000.

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[4] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[5] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps it has taken to comply.

Dated: Washington, D.C. May 15, 2002

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to bargain and continue bargaining with International Longshoremen's Association Local 2000, Great Lakes District Council-Atlantic Coast District, as the exclusive collective-bargaining representative of employees in an appropriate bargaining unit of:

> All full-time seasonal and non-seasonal non-pilot employees employed by Western Great Lakes Pilots Association; excluding guards, supervisors and managers as defined by the National Labor Relations Act, as amended.

WE WILL NOT in any like or related manner interfere with, restrain or coerce you in the exercise of your rights protected by the National Labor Relations Act.

WE WILL, upon request, bargain in good faith with the above-named union, as the exclusive representative of our employees in the above-described appropriate bargaining unit, and embody any agreement reached in a written contract.

WESTERN GREAT LAKES PILOTS ASSOCIATION